IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

RP.No. 413 of 2003()

AGAINST THE JUDGEMENT/ORDER IN CRP.397/2002 Dated 04/02/2003
OS.37/1974 of ADDL.SUB COURT,KOTTAYAM
(EP. 365 /1999)
.....

PETITIONER/PETITIONER:

LEKSHMIKUTTY AMMA D/O. KALLYANI AMMA,
PALLIYANOORKATTIL HOUSE, URULIKUNNAM KARA,
ELIKALAM VILLAGE, KOTTAYAM.

BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SMT.SREEDEVI KYLASANATH
SRI.B.PREMNATH
SRI.PRAKASH

RESPONDENTS: PETITIONERS & RESPONDENTS:
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1. **IRAVI SIVARAMAN NAIR,**
S/O. KUNJUPENNAMMA, THAKKEDIYANGAL HOUSE,
ELAMPALLY KARA, ANICAUD VILLAGE, KOTTAYAM.

2. **KALLIYANI AMMA, S/O. KUNJUPONNAMMA,**
THAKADIYANGAL HOUSE, ELAMPALLY KARA,
ANICAUD VILLAGE,KOTTAYAM.

3. **BHAVANI AMMA D/O. KALYANI AMMA,**
PULIYANOORKATTIL HOUSE, URULIKUNNAM KARA,
ELIKULAM VILLAGE, KOTTAYAM,

4. **T.K.SAROJINI AMMA,**
PULIYANOORKATTIL HOUSE, URULIKUNNAM KARA,
ELIKULAM VILLAGE, KOTTAYAM.

BY ADV. SRI.GOVIND K.BHARATHAN
SRI.MANU MOHAN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 06/11/2007 ALONG WITH RP NO. 414 OF 2003, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER IN I.A.NO.3261/2004 IN R.P.NO.413/2003

DISMISSED

6/11/2007 **SD/- M.N.KRISHNAN, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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R.P. No.413/2003 In CRP No.397/2002 &
R.P.No.414/2003 in CRP No.400/2002

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Dated this the 6th day of November 2007

ORDER

Both these review petitions are filed to review the order of this court whereby this court allowed the revision petitions and dismissed the execution petitions. Following facts cannot be disputed. The final decree was passed on 23.7.1983. The stamp papers for engrossing the final decree was produced on 23.8.1983. The execution petitions were filed in the year 1999. So, admittedly both the execution petitions were filed 16 years after the passing of the final decree. The question to be considered is whether the execution can be had after 16 years in the light of Article 136 of the Indian Limitation Act. As per Article 136, an application for execution of the decree has to be filed within a period of 12 years when the decree or order becomes enforceable. So, the crucial question to be decided is when the decree has become enforceable. When a final decree is passed and it has become final, that day onwards it assumes the character of an enforceable decree irrespective of the fact that it is engrossed in a stamp paper subsequent to that. This position has been considered by the Apex Court in

the decision reported in ***Hameed Joharan v. Abdul Salam(2001) 7 SCC 573***. The Apex Court held that even though engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply, however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper--this is opposed to the fundamental principle on which the statutes of limitation are founded. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times; even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. The Apex Court held that a decree has to be executed within a period of 12 years from the date on which it becomes enforceable. Even if the decree is engrossed in a stamped paper that shall not be a period of limitation, but, it is the date of the final decree which becomes enforceable is the crucial date.

Therefore, the order passed by this court in the above C.R.Ps. is strictly in accordance with law and there is no error apparent on the face of the record nor there is anything which could not be brought to the notice of the court in spite of diligence and also there are no other sufficient reasons.

Therefore, both the review petitions lack merits and the same are

dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-